IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-15-11-2005

Present:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition No. 451 of 2003

P. Ramasamy. .. Petitioner.

Vs.

1. The Government of Tamil Nadu,
   represented by its Secretary,
   Department of Home,
   Fort St. George, Chennai-4.

2. The Inspector General of Police,
   Mylapore, Chennai-4.

3. The Deputy Inspector General of Police,
   Ramanathapuram Range, Ramanathapuram.

4. The Superintendent of Police,
   Virudhunagar District,
   Virudhunagar.

5. The Deputy Inspector General of Police,
   Vellore Range, Vellore.

6. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai. .. Respondents.

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Writ Petition has been filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records in O.A.No. 919/2000 dated 17-01-2002 on the file of sixth respondent, confirming the order in C.No: B2/PR.3/2000 dated 24-01-2000 on the file of fifth respondent and the consequential order in R.C.No. B1/12886/2002 dated 24-9-2002 on the file of third respondent and quash the same as illegal and direct the respondents 1 to 5 to give continue employment as Inspector of Police with all other attendant benefits.

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Mr. Vijaynarayan, Senior counsel for Mr. R. Sankara-subbu:- For petitioner.

Mr. E. Sampathkumar, Govt.,Advocate:- For R-1 to R-5.

ORDER

(Order of the Court was made by P. Sathasivam, J.,)

The petitioner while working as Inspector of Police at Thiruthangal Police Station in 1991, based on the statement of some of the accused, the following three charges were framed against him under 3 (b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955. They are:

> "i) Dereliction of duty in having failed to register a case against Jothi, S/o Govinda Thevar of Gankakulam on 22-11-1991 for his involvement in the counterfeit currency case and kept him in illegal custody at Thiruthangal Police Station on the night of 22-11-1991 for extracting illegal gratification;
>
> ii) Reprehensible conduct in having released Jothi on 23-11-1991 without registering a case against him u/s 489 (C) I.P.C. after getting a bribe of Rs.20,000/- through Devaraj S/o Muthiah Thevar concerned in Thiruthangal P.S Crime No. 446/91 u/s 489 (C) I.P.C.,;
>
> iii) Reprehensible conduct in aiding and abetting the offence of concealing the counterfeit currency notes on 22-11-91 and 23-11-91 through the accused concerned in Thiruthangal P.S Crime No. 446/91 u/s 489 (C) I.P.C."

A domestic enquiry was conducted and the Enquiry Officer submitted a report holding that first and third charges were proved and the second charge was partly proved. Meanwhile, a criminal case which was filed against him on the same allegations in S.C.No. 58/94 before the Assistant Sessions Judge, Srivilliputhur, ended in honourable acquittal on the ground that there is no evidence to substantiate the prosecution case. The said order was passed by the learned Assistant Sessions Judge on 2-11-95. However, irrespective of the conclusion of the Sessions Court, the 5th respondent-Deputy Inspector General of Police, Vellore Range, original authority by order dated 24-1-2000, has awarded punishment of reduction of rank as Sub Inspector of Police for a period of 2 years with immediate effect. The said order was under challenge in O.A.No.919/2000. Since his counsel did not appear before the Tribunal on the date of final hearing, the Tribunal

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passed an order mainly relying on the counter filed by the department and omitted to take into account the honourable acquittal from the Court of Assistant Sessions Judge for the same charges framed against him in the domestic enquiry and ultimately dismissed his Original Application; hence the present writ petition.

2. Heard Mr. Vijaynarayan, learned Senior Counsel for petitioner and Mr. E. Sampathkumar, learned Government Advocate for respondents 1 to 5.

3. We have already extracted the three charges levelled against the petitioner. It is also relevant to note that simultaneously a criminal case was also launched against the petitioner and he was charged for screening of evidence and protecting the accused who was possessing the counterfeit Currency notes giving false information punishable under Section 221 read with 489 (E)IPC and punishable under Section 221 IPC for dereliction of duty by a public servant with intentionally failed to arrest the offender. Before the Sessions Court, prosecution has examined as many as 12 witnesses and produced several documents in support of the charges. After analysing the evidence in detail, the learned Assistant Sessions Judge has found that the evidence let in on the side of the prosecution is not sufficient to connect the accused with the charges and the prosecution case was not proved beyond all reasonable doubts and concluded that the accused is not guilty of all the charges and acquitted him. As said earlier, the said order was passed on 2-11-1995. The disciplinary authority, namely, Deputy Inspector General of Police, Vellore Range/5th respondent herein, has passed an order on 24-1-2000 awarding punishment of reduction in rank as Sub Inspector of Police for a period of two years without considering the decision of the criminal court. It is not in dispute that irrespective of the verdict of the Criminal Court either acquittal or conviction, undoubtedly, the department can proceed with the departmental enquiry in respect of the charges levelled against the officer. However, if the criminal court acquitted the very same person on merits, on ground that the charges framed against him had not been proved, the Department cannot ignore the said order of acquittal. It cannot be expected that all cases in criminal proceedings on the very same set of facts will end in acquittal and the departmental action should not be proceeded with. It is settled law that if the acquittal in the criminal proceedings is not a honourable one, it is always open to the Department to proceed with the departmental proceedings or enquiry. An honourable acquittal would only mean a acquittal which is free from any doubt. In the case on hand, the judgement of the Sessions Court dated 2-11-95 amply shows that after analysing the prosecution case, and the oral and documentary evidence, the learned Sessions Judge after finding that there is no acceptable material or evidence to connect the accused with the crime, acquitted him from the charges. The very same

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charges had been framed by the department and at the time of passing of the final order by the disciplinary authority namely on 24-1-2000, the judgement of the criminal court dated 2-11-95 could very well be available before him. Unfortunately, the disciplinary authority has not taken it for consideration and not even made a reference of the judgement of the criminal court in its order.

4. Coming to the order of the Tribunal, though counsel appearing for the petitioner did not appear at the time when the case was taken up by the Tribunal, but the perusal of the Original Application shows that the petitioner/applicant has specifically referred to the judgment of the Sessions Court dated 2-11-95 acquitting him stating that the charges have not been proved beyond reasonable doubt. In such a circumstance, it is but proper on the part of the Tribunal to consider the same while passing the order in the Original Application. Instead, the Tribunal having gone into the enquiry proceedings, confirmed the order of the Original Authority without making any reference as to the pronouncement of judgment by the Sessions Court in favour of the petitioner/accused. Inasmuch as the charges both in the departmental enquiry and in the criminal case are one and the same, and the Criminal Court acquitted the accused on merits, we are of the view that the disciplinary authority and the Tribunal ought to have focussed their attention to the verdict of the criminal court and considered the same before passing the order. As a matter of fact, the Tamil Nadu Police Standing Orders and the instructions by the Government make it clear that if the charge in the departmental enquiry and the criminal case are identical, the dismissal of the criminal case acquitting the accused on merits is to be considered by the department before proceeding further. We are satisfied that inasmuch as the charge in the departmental enquiry and the grounds leading to the prosecution of the accused is on the same set of facts and in view of the fact that the criminal case ended in honourable acquittal on merits even as early as on 2-11-95, the disciplinary authority and the Tribunal ought to have considered the same before proceeding further. We are satisfied that the petitioner has made out a case for interference.

5. In the light of what is stated above, the impugned order of the Tribunal and all the orders of the respondents 3 and 5 are quashed. The Writ Petition is allowed. No costs.

R.B.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government,
   Department of Home,
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2. The Inspector General of Police,
   Mylapore, Chennai-4.

3. The Deputy Inspector General of Police,
   Ramanathapuram Range, Ramanathapuram.

4. The Superintendent of Police,
   Virudhunagar District,
   Virudhunagar.

5. The Deputy Inspector General of Police,
   Vellore Range, Vellore.

6. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai.

+1cc to Government Pleader(SR.45168)

TA(CO)
rvr/18.11

Order in
W.P.No. 451 of 2003.

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